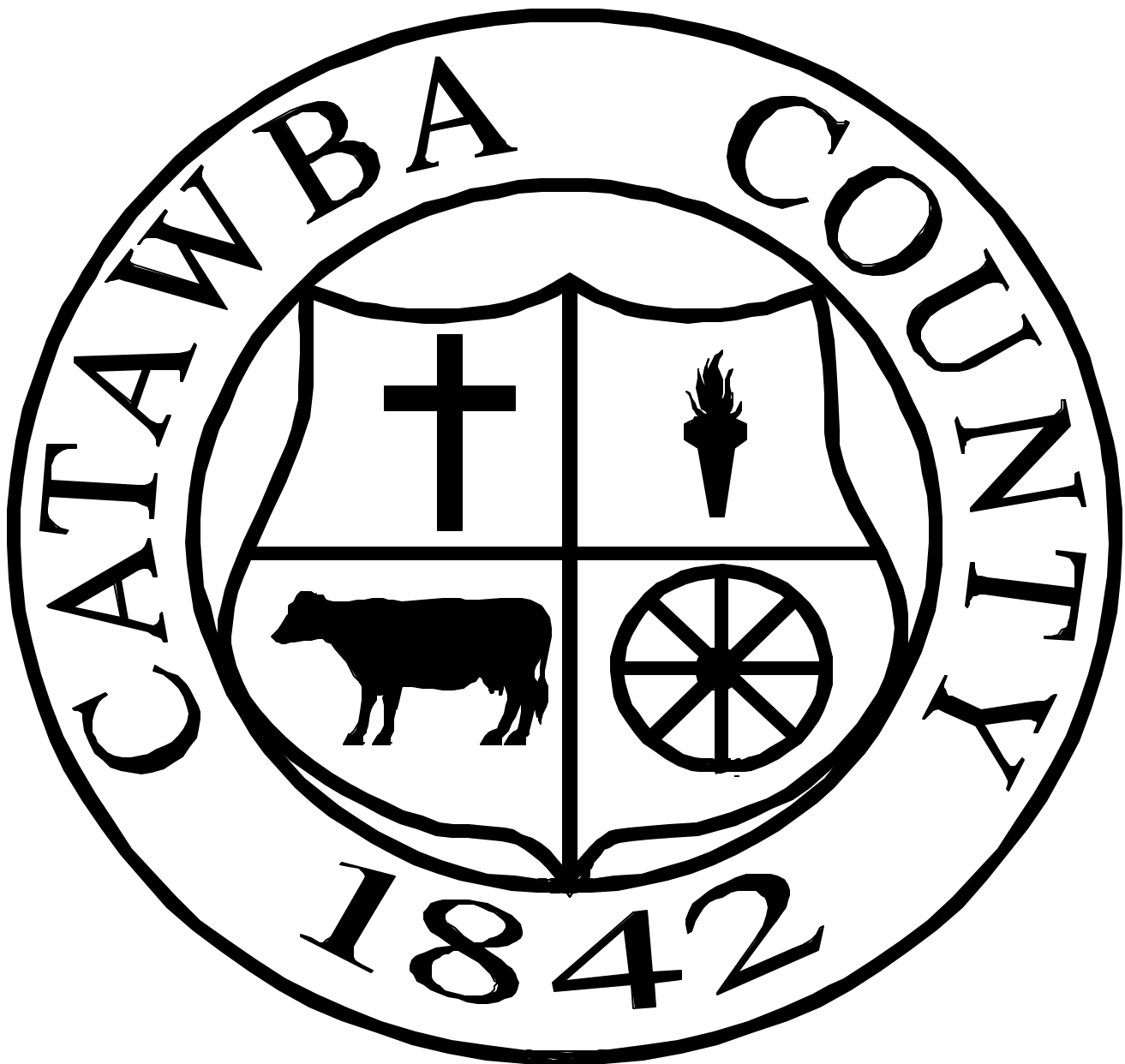


Chapter 44 – ARTICLE XIV. FLOOD DAMAGE PREVENTION*



Current as of 7/01/2003

DIVISION 1. GENERALLY

***Cross references:** Floodplains and manufactured home parks, § 26-101.

Sec. 44-836. Statutory authorization.

G.S. 143-215.51--143-215.61, 153A-121--153A-157, and 153A-340--153A-390 delegated the responsibility to local governmental units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

(Code 1995, § 512.01)

Sec. 44-837. Effect on rights and liabilities; existing building permits.

- (a) *Effect on rights and liabilities under existing article.* This article in part comes forward by reenactment of some of the provisions of the flood damage prevention ordinance enacted on September 3, 1980, as amended on January 1, 1990, and it is not the intention to repeal but rather to reenact and continue to enforce without interruption such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this article on May 2, 1994, shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention chapter of the county enacted on September 3, 1980, as amended on January 1, 1990, which are not reenacted in this article are repealed.
- (b) *Effect upon outstanding building permits.* Nothing within this article shall require any change of plans, construction, size or designed use of any building, structure, or part thereof for which a building permit has been granted by the county before May 2, 1994; provided, however, that when construction has not begun under such outstanding permit within a period of 60 days subsequent to May 2, 1994, construction or use shall be in conformity with this article.

(Code 1995, § 512.02)

Sec. 44-838. Findings of fact.

- (a) The flood hazard areas in the jurisdiction of the county are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare.
- (b) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

(Code 1995, § 512.03)

Sec. 44-839. Statement of purpose.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

- (1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards or which result in damaging increases in erosion or in flood heights or velocities;
- (2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;
- (4) Control filling, grading, dredging, and other development which may increase erosion or flood damage; and
- (5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 1995, § 512.04)

Sec. 44-840. Objectives.

The objectives of this article are to:

- (1) Protect human life and health;
- (2) Minimize expenditure of public money for costly flood control projects;
- (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
- (4) Minimize prolonged business interruptions;
- (5) Minimize damage to public facilities and utilities, such as water and gas mains; electric, telephone and sewer lines; streets; and bridges located in floodplains;
- (6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize flood-blight areas; and
- (7) Ensure that potential homebuyers are notified that property is in a flood area.

(Code 1995, § 512.05)

Sec. 44-841. Definitions.

Unless specifically defined in this section, words or phrases used in this article shall be interpreted so as to give them meaning that they have in common usage and to give this article its most reasonable meaning. The definitions found in this section apply specifically to this article and are intended to supplement the definitions found in section 44-4.

Accessory structure means a structure which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building.

Addition (to an existing building) means an extension or increase in the floor area or height of a building or structure. Additions to existing buildings shall comply with the requirements of new construction, unless the addition, renovation or reconstruction to any building, was constructed prior to the initial flood insurance study for that area and the addition, renovation or reconstruction does not equal 50 percent of the present market value of the structure. Where a firewall is provided between the addition and the existing building, the addition shall be considered a separate building and must comply with the standards for new construction.

Appeal means a request from a review of the local administrator's interpretation of any section of this article.

Area of shallow flooding means a designated AO or VO zone on a community's flood insurance rate map (FIRM) with base flood depths from one to three feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

Area of special flood hazard means the land area within the zoning jurisdiction of the county which is subject to a one-percent or greater chance of flooding being equaled or exceeded in any given year.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Basement means the lowest story of a structure which has its floor subgrade on all sides.

Breakaway wall means a wall, having a design safe loading resistance of not less than ten or more than 20 pounds per square foot, which is not part of the structural support of a building, and designed to collapse under specific lateral forces without causing damage to the foundation system or elevated portion of the building. A wall with loading resistance of more than 20 pounds per square foot requires a professional engineer's or architect's certificate.

Building means any structure built for the support, shelter, or enclosure of any occupancy or storage.

Development means any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; or storage of equipment or materials.

Elevated building means a nonbasement building built, for a building in zone A1--A30, AE, A, A99, AO, AH, B, C, or X, to have the top of the elevated floor above the ground by means of pilings, columns (posts and piers), shear walls parallel to the flow of water, and adequately anchored so as not to impair the structural integrity of the building during a flood up to the magnitude of the base flood. For zones A1--A30, AE, A, A99, AO, AH, B, C, and X, the term "elevated building" also includes a building elevated by means of fill or solid foundation perimeter walls with openings sufficient to facilitate the unimpeded movement of floodwaters.

Existing manufactured home park or manufactured home subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are affixed, including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads, is completed before September 30, 1980.

Expansion to an existing manufactured home park or subdivision means the preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs.

Flood and *flooding* mean a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters; and
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

Flood hazard boundary map (FHBM) means an official map of a community, issued by the Federal Emergency Management Agency (FEMA), where the boundaries of the special flood hazard areas have been designated as zone A.

Flood insurance rate map (FIRM) means an official map of a community on which the Federal Emergency Management Agency has delineated the special flood hazard areas and the risk premium zones applicable to the community.

Flood insurance study means the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, as well as the flood boundary floodway map and the water surface elevation of the base flood.

Floodway means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot.

Floor means the top surface of an enclosed area in a building, including basement, i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

Functionally dependent facility means a facility which cannot be used for its intended purpose unless it is located or carried out in close proximity to water, including but not limited to port or docking facilities for loading and unloading of cargo or passengers, shipbuilding and repair or seafood processing facilities. This term does not include longterm storage, manufacture, sales or service.

Highest adjacent grade means the highest natural elevation of the ground surface, prior to construction, next to the walls of the proposed structure.

Historic structure means any structure that is:

- (1) Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary of the Interior to qualify as a registered historic district;
- (3) Individually listed on a state inventory of historic places; or
- (4) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified by an approved state program as determined by the Secretary of the Interior or approved directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water, so as to provide protection from temporary flooding.

Levee system means a flood protection system consisting of a levee and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area, including basement. An unfinished or flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable nonelevation design requirements of this article.

Manufactured home means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

Manufactured home park or subdivision means a parcel or contiguous parcels of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means the average height of the sea for all stages of the tide. It is used as a reference for establishing varying elevations within the floodplain. For purposes of this article, the term is synonymous with National Geodetic Vertical Datum (NGVD).

National Geodetic Vertical Datum (NGVD) means a vertical control, corrected in 1988, used as a reference for establishing varying elevations within the floodplain.

New construction means structures for which the start of construction commenced on or after the effective date of the ordinance from which this article is derived and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed, including at a minimum the installation of utilities, the construction of streets, and either final grading or the pouring of concrete slabs, is completed on or after September 30, 1994.

Nonconforming building or use means any legally existing building or use which fails to comply with this article.

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis;
- (2) Four hundred square feet or less when measured at the largest horizontal projection;
- (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
- (4) Designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

Reference feature means the receding edge of a bluff or eroding frontal dune or, if such a feature is not present, the normal high water line or the seaward line of permanent vegetation if high water line cannot be identified.

Remedy a violation means to bring the structure or other development into compliance with state or local floodplain management regulations or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include but are not limited to protecting the structure or other affected development from flood damages, implementing the enforcement sections of this article or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other developments.

Start of construction means the first placement of permanent construction of a structure, including a manufactured home, on a site, such as pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units, or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building. This does not apply to new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348), but does apply to substantial improvements generally. For this article, the term "start of construction" means that date the building permit was issued, provided that the actual start of construction, repair, reconstruction, rehabilitation, addition, or improvement was within 180 days of the permit date.

Structure means a walled and roofed building, a manufactured home, including a gas or liquid storage tank, or other manmade facilities or infrastructures that are principally above ground.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See *Substantial improvement*.

Substantial improvement means any repair, reconstruction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual work or repair performed. The term does not, however, include either any project for improvement of a structure to comply with existing state and local health, sanitary, or safety code specifications which are solely necessary to ensure safe living conditions, or any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

Substantially improved existing manufactured home park or subdivision means where the repair, reconstruction, rehabilitation or improvements of the streets, utilities and pads equal or exceed 50 percent of the value of the streets, utilities and pads before the repair, reconstruction, or improvement commenced.

Variance means a grant of relief to a person from the requirements of this article which permits construction in a manner otherwise prohibited by this article where specific enforcement would result in unnecessary hardship.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in this article is presumed to be in violation until such time as that documentation is provided.

(Code 1995, § 512.06)

Cross references: Definitions generally, § 1-2.

Sec. 44-842. Applicability.

This article shall apply to all areas of special flood hazard within the jurisdiction of the county.

(Code 1995, § 512.07)

Sec. 44-843. Establishment of special flood hazard areas.

The areas of special flood hazard identified by the Federal Emergency Management Agency in its flood insurance study for the county, dated September 30, 1980, with accompanying maps and other supporting data, and any revisions thereto are adopted by reference and declared to be a part of this article.

(Code 1995, § 512.08)

Sec. 44-844. Compliance; zoning compliance permit.

- (a) No structure or land shall be located, extended, converted, or structurally altered without full compliance with the terms of this article and other applicable regulations.
- (b) A zoning compliance permit shall be required in conformance with this article prior to the commencement of any development activities.

(Code 1995, § 512.09)

Sec. 44-845. Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Code 1995, § 512.10)

Sec. 44-846. Interpretation.

In the interpretation and application of this article, all sections shall be considered as minimum requirements, liberally construed in favor of the board of commissioners, and deemed to neither limit nor repeal any other powers granted under state statutes.

(Code 1995, § 512.11)

Sec. 44-847. Disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This article does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This article shall not create liability on the part of the county or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made under this article.

(Code 1995, § 512.12)

Secs. 44-848--44-875. Reserved.

DIVISION 2. ADMINISTRATION AND ENFORCEMENT*

*Cross references: Administration, ch. 2.

Sec. 44-876. Designation of local administrator.

The zoning administrator is appointed to administer and implement this article.

(Code 1995, § 512.30)

Sec. 44-877. Duties of zoning administrator.

Under this article, duties of the zoning administrator shall include but not be limited to the following:

- (1) Review all zoning compliance applications to ensure that the requirements of this article have been satisfied.

- (2) Advise the permittee that additional federal or state permits may be required and, if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the development permit.
- (3) Notify adjacent communities and the state department of crime control and public safety, division of emergency management, state coordinator for the national flood insurance program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
- (4) Ensure that maintenance is provided within the altered or relocated portion of the watercourse so that the flood-carrying capacity is not diminished.
- (5) Prevent encroachments within floodways unless the certification and flood hazard reduction provisions of division 3 of this article are met.
- (6) Obtain actual elevation, in relation to mean sea level, of the lowest floor, including basement, of all new or substantially improved structures, in accordance with section 44-878(a)(7) and (b).
- (7) Obtain the actual elevation, in relation to mean sea level, to which the new or substantially improved structures have been floodproofed, in accordance with section 44-878(a)(7) and (b).
- (8) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with section 44-917(c).
- (9) Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.
- (10) When base flood elevation data or floodway data has not been provided in accordance with section 44-843, obtain, review and reasonably utilize any base flood elevation data and floodway data available from a federal, state or other source, including data developed pursuant to section 44-919(d), in order to administer this article.
- (11) When the exact location of boundaries of the areas of special flood hazard conflict with the current, natural topography information at the site, the property owner may apply and be approved for a letter of map amendment (LOMA) by the Federal Emergency Management Agency. A copy of the LOMA issued from the Federal Emergency Management Agency will be maintained by the zoning administrator in the permit file.
- (12) Make on-site inspections of projects in accordance with sections 44-879 through 44-886.
- (13) Serve notices of violations, issue stop work orders, revoke permits and take corrective actions in accordance with sections 44-879 through 44-886.

- (14) Maintain all records pertaining to the administration of this article and make these records available for public inspection.

(Code 1995, § 512.31)

Sec. 44-878. Zoning compliance; certification.

- (a) For the purposes of this article, application for zoning compliance shall be made to the zoning administrator on forms furnished by him prior to any development activities. The application may include but not be limited to plans in duplicate drawn to scale showing the nature, location, dimensions, and elevators of the area in question; existing or proposed structures; and the location of fill, materials, storage areas and drainage facilities. Specifically, the following information is required:
 - (1) A plot plan that shows the 100-year floodplain contour or a statement that the entire lot is within the floodplain must be provided by the development permit applicant when the lot is within or appears to be within the floodplain as mapped by the Federal Emergency Management Agency or the floodplain identified pursuant to either section 44-877(10) or sections 44-918 and 44-919. The plot plan must be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same.
 - (2) The plot plan required by subsection (a)(1) of this section must show the floodway, if any, as identified by the Federal Emergency Management Agency or the floodway identified pursuant to either section 44-877(10) or section 44-918.
 - (3) Where base flood elevation data is provided in accordance with this section or section 44-877(10), an application for a zoning compliance permit within the flood hazard area shall show the following:
 - a. The elevation, in relation to mean sea level, of the lowest floor, including basement, of all new and substantially improved structures; and
 - b. If the structure has been floodproofed in accordance with section 44-917(c), the elevation, in relation to mean sea level, to which the structure was floodproofed.
 - (4) Where the base flood elevation data is not provided, the application for a zoning compliance permit must show construction of the lowest floor at least two feet above the highest adjacent grade.
 - (5) Where any watercourse will be altered or relocated as a result of proposed development, the application for a zoning compliance permit shall include the following:
 - a. A description of the extent of watercourse alteration or relocation;
 - b. An engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and
 - c. A map showing the location of the proposed watercourse alteration or relocation.

- (6) When a structure is floodproofed, the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential floodproofed structure meets the floodproofing criteria in section 44-917(c).
- (7) A floor elevation or floodproofing certification is required after the lowest floor is completed. Within 21 calendar days of establishment of the lowest floor elevation or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the zoning administrator a certification of the elevation of the lowest floor or floodproofed elevation, whichever is applicable, in relation to mean sea level.
- (b) The certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by the surveyor or engineer. When floodproofing is utilized for particular building, the certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by the engineer or architect. Any work done within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The zoning administrator shall review the floor elevation survey data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further progressive work being permitted to proceed. Failure to submit the survey or failure to make such corrections required shall be cause to issue a stop work order for the project.

(Code 1995, § 512.32)

Sec. 44-879. Inspections.

- (a) *Work in progress.* As the work pursuant to a permit issued under this article progresses, the zoning administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to this article and the terms of the permit. In exercising this power, the administrator has a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction at any reasonable hour for the purposes of inspection or other enforcement action.
- (b) *Periodic inspections.* The zoning administrator and each member of his inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(Code 1995, § 512.33)

Sec. 44-880. Stop work orders.

Whenever a building or part thereof is being constructed, reconstructed, altered or repaired in violation of this article, the administrator may order the work to be immediately stopped. The stop work order shall be in writing and directed to the person doing the work. The stop work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop work order constitutes a misdemeanor.

(Code 1995, § 512.34)

Sec. 44-881. Revocation of permits.

The zoning administrator may revoke and require the return of the zoning compliance permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.
(Code 1995, § 512.35)

Sec. 44-882. Correction of violations.

Under this article, when the zoning administrator finds violations of applicable state and local laws, it shall be his duty to notify the owner or occupant of the building of the violation. The owner or occupant shall each immediately remedy the violations of law in the property he owns.
(Code 1995, § 512.36)

Sec. 44-883. Failure to take corrective actions.

If the owner of a building or property shall fail to take prompt corrective action required under this article, the zoning administrator shall give him written notice, by certified or registered mail, to his last known address or by personal service that:

- (1) The building or property is in violation of this article;
- (2) A hearing will be held before the zoning administrator at a designated place and time, not later than ten days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
- (3) Following the hearing, the zoning administrator may issue such order to alter, vacate, or demolish the building or to remove fill as appears appropriate.

(Code 1995, § 512.37)

Sec. 44-884. Order to take corrective action.

If, upon a hearing held pursuant to the notice prescribed in section 44-83, the zoning administrator shall find that the building or development is in violation of this article, he shall make an order in writing to the owner, requiring the owner to remedy the violation, within such period, not less than 60 days, as the administrator may prescribe. However, where the administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

(Code 1995, § 512.38)

Sec. 44-885. Appeal.

Any owner who has received an order to take corrective action required under this article may appeal from the order to the board of commissioners by giving notice of appeal in writing to the zoning administrator and the clerk of the board of commissioners within ten days following issuance of the final order. In the absence of an appeal, the order of the zoning administrator

shall be final. The board of commissioners shall hear an appeal within a reasonable time and may affirm, modify and affirm or revoke the order.

(Code 1995, § 512.39)

Sec. 44-886. Failure to comply with orders.

If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken or fails to comply with an order of the board of commissioners following an appeal pursuant to this article, he shall be guilty of a misdemeanor and shall be punished in the discretion of the court.

(Code 1995, § 512.40)

Sec. 44-887. Variances.

- (a) The board of adjustment as established by the county shall hear and decide appeals and requests for variances from the requirements of this article.
- (b) Any person aggrieved by the decision of the appeal board or any taxpayer may appeal such decision to the court, as provided in G.S. ch. 7A.
- (c) Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
- (d) In passing upon such applications, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:
 - (1) The danger that materials may be swept onto other lands to the injury of others;
 - (2) The danger to life and property due to flooding or erosion damage;
 - (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (4) The importance of the services provided by the proposed facility to the community;
 - (5) The necessity to the facility of a waterfront location, where applicable;
 - (6) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
 - (7) The compatibility of the proposed use with existing and anticipated development;
 - (8) The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
 - (9) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (10) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and

- (11) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities, such as sewer, gas, electrical, and water systems and streets and bridges.
- (e) The considerations listed in subsection (d) of this section shall be submitted to the appeal board, in writing, and included in the application for a variance.
- (f) Upon consideration of the factors listed in subsection (d) of this section and the purposes of this article, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this article.
- (g) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
- (h) Conditions for variances are as follows:
 - (1) Variances may not be issued when the variance will make the structure in violation of federal, state, or local laws, regulations, or ordinances.
 - (2) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
 - (3) Variances shall only be issued upon:
 - a. A showing of good and sufficient cause;
 - b. A determination that failure to grant the variance would result in exceptional hardship; and
 - c. A determination that the granting of a variance will not:
 - 1. Result in increased flood heights, additional threats to public safety, or extraordinary public expense;
 - 2. Create a nuisance;
 - 3. Cause fraud on or victimization of the public; or
 - 4. Conflict with existing local laws or ordinances.
 - (4) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.
 - (5) The zoning administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

(Code 1995, § 512.41)

Sec. 44-888. Penalty.

Violation of this article or failure to comply with any of the requirements of this article, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this article or who fails to comply with any of its requirements shall, upon conviction, be punished in accordance with section 1-14. Each day such violation continues shall be considered a separate offense. Nothing contained in this section shall prevent the county from taking such other lawful action as is necessary to prevent or remedy any violation.

(Code 1995, § 512.99)

Secs. 44-889--44-915. Reserved.

DIVISION 3. FLOOD HAZARD REDUCTION STANDARDS**Sec. 44-916. General standards.**

- (a) In all areas of special flood hazard the following are required:
 - (1) All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;
 - (2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;
 - (3) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages;
 - (4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;
 - (5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems;
 - (6) New and replacement sanitary sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems, and discharges from the systems into floodwaters;
 - (7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding; and
 - (8) Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with this article shall meet the requirements of new construction (i.e., section 44-917) as contained in this article.
- (b) Nonconforming buildings or uses in all areas of special flood hazard. Nonconforming buildings or uses may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with this article. However, nothing in this article shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of the ordinance from which this article is derived and located totally or partially within the floodway zone, provided that the bulk of the

building or structure below the base flood elevation in the floodway zone is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this article.

(Code 1995, § 512.20)

Sec. 44-917. Specific standards.

- (a) *Required.* In all areas of special flood hazard where base flood elevation data has been provided, as set forth in section 44-843 or 44-877(10), the standards of this section are required.
- (b) *Residential construction.* New construction or substantial improvement of any residential structure, including manufactured homes, shall have the lowest floor, including basement, elevated no lower than two feet above the base flood elevation. Should solid foundation perimeter walls be used to elevate a structure, openings sufficient to facilitate the unimpeded movements of floodwaters shall be provided.
- (c) *Nonresidential construction.* New construction or substantial improvement of any commercial, industrial, or nonresidential structure, including manufactured homes, shall have the lowest floor, including basement, elevated no lower than two feet above the level of the base flood elevation. Structures located in A zones may be floodproofed in lieu of elevation, provided that all areas of the structure below the required elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the official as set forth in section 44-878(a)(7) and (b).
- (d) *Manufactured homes.* Standards for manufactured homes are as follows:
 - (1) Manufactured homes that are placed or substantially improved on a site outside a manufactured home park or subdivision, in a new manufactured home park or subdivision, in an expansion to an existing manufactured home park or subdivision, or in an existing manufactured home park or subdivision on which a manufactured home has incurred substantial damage as the result of a flood must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated no lower than two feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.
 - (2) Manufactured homes that are to be placed or substantially improved on sites in an existing manufactured home park or subdivision that are not subject to subsection (d)(1) of this section must be elevated so that the lowest floor of the manufactured home is elevated no lower than two feet above the base flood elevation and be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.
 - (3) Manufactured homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purposes of this subsection, manufactured homes must be anchored to resist flotation, collapse, or lateral movement in accordance with the regulations for manufactured homes and modular housing adopted by the

commissioner of insurance pursuant to G.S. 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevation of the chassis is above 36 inches in height, an engineering certification is required.

- (4) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within floodprone areas. This plan shall be filed and approved by the local administrator and the local emergency management coordinator.
- (e) *Recreational vehicles.* A recreational vehicle is ready for highway use if it is on wheels or jacking system, is attached to the site only by quick-disconnect-type utilities and security devices, and has no permanently attached additions. Recreational vehicles placed on sites shall either:
 - (1) Be on site for fewer than 180 consecutive days;
 - (2) Be fully licensed and ready for highway use; or
 - (3) Meet the requirements of sections 44-916 and subsection (d) of this section.
- (f) *Elevated buildings.* New construction or substantial improvements of elevated buildings that include fully enclosed areas that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to preclude finished living space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters.
 - (1) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following minimum criteria:
 - a. Provide a minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - b. The bottom of all openings shall be no higher than one foot above grade; and
 - c. Openings may be equipped with screens, louvers, valves, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions.
 - (2) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).
 - (3) The interior portion of such enclosed area shall not be partitioned or finished into separate rooms, except to enclose storage areas.
- (g) *Temporary structures.* Prior to the issuance of a development permit, the following requirements must be met for a temporary structure:

- (1) All applicants must submit to the zoning administrator prior to the issuance of a zoning compliance permit a plan for the removal of such structure if a hurricane or flash flood warning notification occurs. The plan must include the following information:
 - a. A specified time period for which the temporary use will be permitted.
 - b. The name, address and phone number of the individual responsible for the removal of the temporary structure.
 - c. The timeframe prior to the event during which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification).
 - d. A copy of the contract or other suitable instrument with a trucking company to ensure the availability of removal equipment when needed.
 - e. The designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.
 - (2) The information required in subsection (g)(1) of this section shall be submitted in writing to the local administrator for review and written approval.
- (h) *Accessory structures.* When accessory structures (sheds, detached garages, etc.) with a value of \$3,000.00 or less are to be placed in the floodplain, the following criteria shall be met:
- (1) Accessory structures shall not be used for human habitation, including work, sleeping, living, cooking or restroom areas.
 - (2) Accessory structures shall be designed to have low flood-damage potential.
 - (3) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters.
 - (4) Accessory structures shall be firmly anchored in accordance with section 44-916(1).
 - (5) Service facilities, such as electrical and heating equipment, shall be installed in accordance with section 44-916(4).
 - (6) Openings to relieve hydrostatic pressure during a flood shall be provided below base flood elevation in conformance with subsection (f) of this section.
- (i) *Floodways.* Located within areas of special flood hazard established in section 44-843 are areas designated as floodways. The floodway is an extremely hazardous area due to the velocity of floodwaters which carry debris and potential projectiles and have erosion potential. The following shall apply within such areas:
- (1) No encroachments, including fill, new construction, substantial improvements and other developments, shall be permitted unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the zoning administrator.

- (2) If subsection (i)(1) of this section is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction sections of this article.
- (3) No manufactured homes shall be permitted, except in an existing manufactured home park or subdivision. A replacement manufactured home may be placed on a lot in an existing manufactured home park or subdivision, provided the anchoring and the elevation standards of section 44-917(d) are met.

(Code 1995, § 512.21)

Sec. 44-918. Streams without base flood elevations; floodways.

Located within the areas of special flood hazard established in section 44-843 are small streams where no base flood data has been provided or where no floodways have been identified. The following apply within such areas:

- (1) No encroachments, including fill, new construction, substantial improvements, or new development, shall be permitted within a distance of 20 feet from the top of each streambank, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (2) If subsection (1) of this section is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard reduction sections of this article and shall be elevated or floodproofed in accordance with elevations established in accordance with section 44-877(10). When base flood elevation data is not available from a federal, state, or other source, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade.

(Code 1995, § 512.22)

Sec. 44-919. Subdivision proposals.

- (a) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (b) All subdivision proposals shall have public utilities and facilities, such as sewer, gas, electrical, and water systems, located and constructed to minimize flood damage.
- (c) All subdivision proposals shall have adequate drainage provided to reduce exposure to flood hazards.
- (d) Base flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than the lesser of 50 lots or five acres.

(Code 1995, § 512.23)

Cross references: Protection from flooding in subdivisions, § 36-76.

Sec. 44-920. Areas of shallow flooding (AO zones).

Located within the areas of special flood hazard established in section 44-843 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. The following shall apply within such areas:

- (1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade.
- (2) All new construction and substantial improvements of nonresidential structures shall:
 - a. Have the lowest floor, including basement, elevated to the depth number specified on the flood insurance rate map, in feet, above the highest adjacent grade. If no depth number is specified, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade; or
 - b. Be completely floodproofed together with attendant utility and sanitary facilities to or above that level so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.

(Code 1995, § 512.24)

Secs. 44-921--44-945. Reserved.